

MICHAEL A. CARDOZO
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

BRIAN FRANCOLLA
Assistant Corporation Counsel
Tel.: (212) 788-0988
Fax: (212) 788-9776

MEMO ENDORSED

July 3, 2008

BY HAND DELIVERY

Honorable Naomi R. Buchwald
United States District Judge
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 2270
New York, New York 10007-1312

Re: Rudolpho Enrique Jouv'ert v. City of New York, et. al, 07 CV 5825 (NRB)

Your Honor:

I am an Assistant Corporation Counsel in the Special Federal Litigation Division of the New York City Law Department handling the defense of the above-referenced matter on behalf of defendant City of New York. I write in response to plaintiff's letter to the Court dated June 16, 2008, in which he requests a three month enlargement of time, from August 5, 2008 to November 5, 2008, for discovery so that, in part, he can obtain the names of the individual he identified in the caption of the complaint as "Juan Doe" and any possible witnesses.

As an initial matter, defense counsel does not object to plaintiff's request for a three month extension of time within which to complete discovery. Defense counsel notes, however, that plaintiff did not contact or confer with this Office prior to making his application to the Court, and we respectfully request that plaintiff be reminded of his obligation to do so for any future applications.

In his letter, plaintiff advised the Court that he served defense counsel with discovery requests, but that to date, he has not received any responses to those requests. Additionally, plaintiff requests a three month enlargement of time in order to obtain the identity of any police officer(s) who may have been involved in the incident and any witnesses who may have observed the incident, and to conduct discovery. Defense counsel received plaintiff's discovery requests, which were served before the start of discovery in this matter. Defense counsel is in the process of preparing responses to these requests, and we will provide them to plaintiff on or before July 16, 2008.

To date, however, defense counsel respectfully submits that based on the allegations contained in the complaint, we have been unable to identify the name(s) of any police

MEMO ENDORSED

So ordered
Naomi
Reice
Reviewed
USNY
7/9/08

So ordered
Naomi
Reice
Reviewed
USNY
7/9/08

officer who may have observed the alleged incident and/or arrested the individual plaintiff claims attacked him on July 20, 2004.

By way of background, plaintiff claims that on July 20, 2004 as he was exiting a northbound 4 subway line train onto the 4/5 subway platform at 42nd Street, he was involved in a verbal and physical altercation with another passenger, Rashid Salaam. Plaintiff claims that Rashid Salaam attacked him, and that a New York City Police Officer (identified in the complaint as "Juan Doe") who was nearby observed the altercation and intervened to break it up. Plaintiff claims that he then left the train platform, went up a staircase which he claims lead to the mezzanine of Grand Central Station, that he went through the turnstiles, turned left, and began running up a staircase which leads to Grand Central Station Terminal. Plaintiff claims that while he was running up the staircase leading to Grand Central Station, Rashid Salaam approached him from behind and began to stab him with a kitchen steak knife. Plaintiff claims that Rashid Salaam was subsequently arrested by the same officer who had broken up the initial altercation on the 4/5 subway platform.

Based on plaintiff's allegations as to where the alleged incident took place, I have been informed that the alleged unidentified officer who could have been assigned to the Midtown South Precinct, Transit District #4, or the Metropolitan Transit Authority Police Department.¹ At this time, we are still conducting an investigation into plaintiff's allegations. Defense counsel has contacted each of these entities in an effort to ascertain the name of the unidentified officer and whether there is any documentation regarding the alleged incident. To date, we are not in receipt of any responsive information and/or documents. Moreover, defendant notes that because Rashid Salaam is not a party to this litigation, and we are not in receipt of an unsealing release signed by him, pursuant to New York Criminal Procedure Law § 160.50, this Office is unable to access the underlying paperwork pertaining to his alleged arrest and/or prosecution.

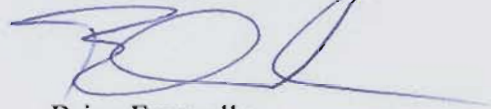
Notwithstanding the above, we assure the Court and plaintiff that we will continue our efforts to investigate plaintiff's allegations and to identify the "Juan Doe" officer, and should we obtain any information responsive to plaintiff's request, we will promptly advise plaintiff of same.

Finally, defendant respectfully requests leave of Court, pursuant to Rule 30(a)(2) of the Federal Rules of Civil Procedure, to take the deposition of plaintiff, who is currently incarcerated at Clinton Correctional Facility. Defendant respectfully requests that the Court endorse two copies of the enclosed Order so that arrangements can be made to move inmate plaintiff from Clinton Correctional Facility to Sing Sing Correctional Facility for a deposition on August 1, 2008 at 10:00 a.m. This Office can arrange for the original signed Orders to be retrieved from the Courthouse once they have been endorsed by Your Honor.

¹ Defendant notes that any officer employed by the Metropolitan Transit Authority Police Department would not be represented by the Office of the Corporation Counsel.

In view of the foregoing, it is respectfully requested that the Court grant the within requests. Thank you for your consideration.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'BF', with a long horizontal line extending to the right.

Brian Francolla
Assistant Corporation Counsel
Special Federal Litigation Division

cc: Mr. Rudolpho Enrique Jouv'ert (By mail)
Plaintiff *Pro Se*
DIN # 06-A-4662
Clinton Correctional Facility
PO Box 2000
Dannemora, NY 12929